No. 77-1294

In the
Supreme Court of the United States
OCTOBER TERM, 1977

WILLIE REEVES,
Petitioner,

vs.

MIKEL WAND,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM J. STEVENS
FOSS, SCHUMAN & DRAKE
11 South LaSalle Street
Chicago, Illinois 60603
Telephone: 312/782-2610
Attorney for Mikel Wand,
Respondent.

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QUESTIONS PRESENTED

1. Will this Court disturb the decision of the United States Court of Appeals for the Seventh Circuit to apply Ill. Rev. Stat. ch. 83 §16 as the appropriate Illinois Statute of Limitations to be applied to an action under the Civil Rights Act 42 USC §1983?

2. Does Federal Law require any particular formula for applying a State Statute of Limitations to a Federal claim as a matter of State law?

STATEMENT OF THE CASE

The respondent filed his Civil Rights Complaint under 42 USC §1983 in the United States District Court for the Northern District of Illinois on January 21, 1975. The Complaint, as amended, alleges that on March 1, 1972 the petitioner, Willie Reeves, acting under color of law inflicted summary punishment upon the plaintiff and alleges that the rights sought to be enforced are secured to the respondent by the Fourteenth Amendment to the Constitution of the United States (Amended Complaint). The District Court denied petitioner's Motion for Summary Judgment, holding that the five-year Statute of Limitations contained in Ill. Rev. Stat. ch. 83 §16 governed. On Motion to Reconsider the District Court held that the two-year Statute of Limitations contained in Ill. Rev. Stat. §15 governed and entered judgment for the petitioner (Order March 18, 1977). The United States Court of Appeals reversed on the authority of *Beard* v. *Robinson,* 563 F.2d 331 (7th Cir. 1977).

REASONS FOR DENYING THE WRIT

The Seventh Circuit followed the rule set down by this Court that Civil Rights claims are governed by the applicable limitation period which a Court of the State where the Federal Court sits would apply had the action been brought there. *O'Sullivan* v. *Felix,* 233 U.S. 318 (1914); *Beard* v. *Robinson,* 563 F.2d 331 at 334 (7th Cir. 1977). *O'Sullivan* v. *Felix* does not establish a particular formula by which the State law is to be applied. The case holds that the Statute of Limitations for the forum state governs civil rights action. The defendants in that suit had been convicted of criminal civil rights violations. The Court held that the Louisiana one-year Statute of Limitations governing "damages . . . resulting from offense or quasi offenses". . . limited the civil suit and that the longer Statute of Limitation governing suits "for any penalty" did not apply. No search for an analogy between State and Federal action appear in *O'Sullivan* v. *Felix,* 233 U.S. 318, 321-325 (1914).

The petitioner attempts to draw unreasonable inferences from an aside in footnote 7 in *International Union* v. *Hoosier Cardinal Corporation,* 383 U.S. 696 at 705. The Court did observe that a suit for breach of a collective bargaining agreement is like a suit for breach of contract, but the Court developed no rigid formula which Federal Courts must apply in determining which State Statute of Limitations a State Court would apply to the Federal action if it were brought in State Court. Past decisions of this Court make it plain that such a selection is governed by State law as interpreted and applied by the Federal Courts of Appeals sitting in the several states. In *Johnson* v. *Railway Express Agency,* 421 U.S. 454 at 462-463 Note 7 the Court observed, "Our limited grant of

certiorari foreclosed our considering whether some other Tennessee statute, such as Tenn. Code Ann. §28-309 (1955) (six years for an action on a contract) or §28-310 (1955) ten years on an action not otherwise provided for) might be the appropriate one."

Similarly in *Runyon* v. *McCrary,* 427 U.S. 160 at 181 this Court declined to disturb the fourth circuit's selection of a State Statute of Limitations by saying:

> "We are not persuaded that the Court of Appeals was mistaken in applying the 2-year state statute. The issue was not a new one for that court, for it had given careful consideration to the question of the appriate Virginia statute of limitations to be applied in federal civil rights litigation on at least two previous occasions (*Allen* v. *Gifford,* 462 F.2d 615; *Almond* v. *Kent,* 459 F.2d 200). We are not disposed to displace the considered judgment of the Court of Appeals on an issue whose resolution is so heavily contingent upon an analysis of state law, particularly when the established rule has been relied upon and applied in numerous suits filed in the Federal District Courts in Virginia. In other situations in which a federal right has depended upon the interpretation of state law, 'the Court has accepted the interpretation of state law in which the District Court and the Court of Appeals have concurred even if an examination of the state law issue without such guidance must have justified a different conclusion.' *Bishop* v. *Wood,* 426 U.S. 341, 346, and n. 10, 48 L. Ed. 2d 684, 96 S. Ct. 2074, citing, inter alia, *United States* v. *Durham Lumber Co.,* 363 U.S. 522, 4 L. Ed. 2d 1371, 80 S. Ct. 1282; *Propper* v. *Clark,* 337 U.S. 472, 93 L. Ed. 1480, 69 S. Ct. 1333; *Township of Hillsborough* v. *Cromwell,* 326 U.S. 620, 90 L. Ed. 358, 66 S. Ct. 445." *Runyon* v. *McCrary,* 427 U.S. at 181, 182.

By the cases *Beard* v. *Robinson,* 563 F.2d 331 (7th Cir. 1977), *Wakat* v. *Harlib,* 253 F.2d 59 (7th Cir. 1958), *Baker* v. *F & F Investment,* 420 F.2d 1191, 1197-98 (7th Cir. 1970), and by the present case the Seventh Circuit has firmly defined the Illinois Limitations governing civil rights suits. This Court should not disturb that determination of state law.

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

WILLIAM J. STEVENS
FOSS, SCHUMAN & DRAKE
11 South LaSalle Street
Chicago, Illinois 60603
Telephone: 312/782-2610
Attorney for Mikel Wand, Respondent.